

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.)	CRIMINAL CASE 1:05CR_____
)	
ABHAY VIVEK AGGROIA, MD,)	SENIOR JUDGE LEONARD D. WEXLER
)	
Defendant.)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, Gene Rossi, Assistant United States Attorney, Marla Tusk, Special Assistant U.S. Attorney, and the defendant, ABHAY VIVEK AGGROIA, MD, and the defendant's counsel, Brendan D. Harold, pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

1. Offense And Maximum Penalties: The defendant agrees to waive indictment and plead guilty to a one-count criminal information filed with this agreement. Count One charges the defendant with dispensing through a prescription oxycodone, also known as "Percocet," in violation of Title 21, United States Code, Section 841(a)(1). The maximum penalty for this offense is a term of imprisonment of twenty years, a fine of \$1,000,000, a \$100 special assessment, and at least three years of supervised release. The defendant is aware that the supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant's being returned to prison for the full term of supervised release.

2. Detention Pending Sentencing: The defendant is also aware that this case is governed by 18 U.S.C. §§ 3143(a)(2) and 3145(c). These provisions provide that a judicial officer shall order that a person who has pled guilty to an offense of this kind be detained unless there are "exceptional reasons why such person's detention would not be appropriate." The government agrees to bond pending sentencing.

3. Factual Basis For Plea: The defendant will plead guilty because the defendant is in fact guilty of the charged offense(s). The defendant admits the facts set forth in the Statement of Facts filed with this plea agreement and agrees that those facts establish guilt of the offense(s) charged beyond a reasonable doubt. The Statement of Facts constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the United States Sentencing Guidelines.

4. Assistance And Advice Of Counsel: The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel—and if necessary have the court appoint counsel—at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

5. Role Of Court And Probation Office: This plea is presented to the Court by the parties pursuant to Fed. R. Crim. P. 11(c)(1)(c), which binds the Court once the plea agreement is accepted. The parties agree to waive the preparation and filing of a Presentence Report, which would normally be required under Fed. R. Crim. P. 32 and 18 U.S.C. § 3552. The parties agree that based on the evidence available to the government at the time of the entry of the plea of guilty, the defendant's conduct supports an upward adjustment for abuse of trust, under the U.S. Sentencing Guidelines ("USSG"). In addition, the defendant is entitled to the awarding of two points for acceptance of responsibility and two points for safety valve. The amount of Percocet (40 (5 mg) pills) attributable to the defendant under the USSG is level ten (a USSG conversion to 1.34 kilograms of marijuana). The defendant's criminal history is category I. Therefore, the defendant's sentence upon acceptance of this plea agreement by the Court shall be USSG level 8 (0-6 months). The government agrees to a sentence of probation only without electronic monitoring or home detention.

6. Waiver Of Appeal And Review: The defendant understands that Title 18, United States Code, Section 3742, affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742, or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department

or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

7. Waiver Of DNA Testing: The defendant also understands that 18 U.S.C. § 3600 affords a defendant the right to request DNA testing of evidence after conviction. Nonetheless, the defendant knowingly waives that right. The defendant further understands that this waiver applies to DNA testing of any items of evidence in this case that could be subjected to DNA testing. This waiver forecloses any opportunity to have evidence submitted for DNA testing in this case or in any post-conviction proceeding for any purpose, including to support a claim of innocence to the charges admitted in this plea agreement.

8. Special Assessment: Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

9. Payment Of Monetary Penalties: The defendant understands and agrees that pursuant to Title 18, United States Code, Section 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to

participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

10. Immunity From Further Prosecution In This District: The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the information or Statement of Facts.

11. Defendant's Cooperation: The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the government. In that regard:

- a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.
- b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.
- c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.
- d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice.
- e. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.

- f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.
- g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

12. Prosecution In Other Jurisdiction(s): The United States Attorney's Office for the Eastern District of Virginia will not contact any other local, state, or federal prosecuting jurisdiction(s) and voluntarily turn over truthful information that the defendant provides under this plea agreement to aid a prosecution of the defendant in that jurisdiction. Should any other prosecuting jurisdiction attempt to use truthful information that the defendant provides pursuant to this agreement against the defendant, the United States Attorney's Office for Eastern District of Virginia agrees, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the immunity provisions of this agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

13. Defendant Must Provide Full, Complete, And Truthful Cooperation: This plea agreement is not conditioned upon charges being brought or a conviction being secured against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this

investigation. This plea agreement is conditioned upon the defendant's providing full, complete, and truthful cooperation.

14. Motion For A Downward Departure: The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate. The defendant waives any right to challenge the decision of the United States to make such a motion.

15. Breach Of The Plea Agreement And Remedies: This plea agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement; fails to enter a guilty plea as required by this agreement; commits or attempts to commit any additional federal, state, or local crimes; intentionally gives materially false, incomplete, or misleading testimony or information; or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice,

that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and

- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the Statement of Facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The

defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

16. Nature Of The Agreement And Modifications: This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

17. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the plea agreement, Statement of Facts, and the pending criminal information. Further, I fully understand all rights with respect to 18 U.S.C. § 3553 and the Sentencing Guidelines Manual that may apply in my case. I have read this agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: _____

ABHAY VIVEK AGGROIA, MD
Defendant

18. Defense Counsel's Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the plea agreement, the Statement of Facts, and the pending information. Further, I have reviewed 18 U.S.C. § 3553 and the Sentencing Guidelines Manual, both of whose applicable provisions I have fully explained to

the defendant. I have carefully reviewed every part of this agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____
Brendan D. Harold, Esq.
Counsel for Defendant

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____
Gene Rossi
Assistant U.S. Attorney

Marla Tusk
Special Assistant U.S. Attorney

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ABHAY VIVEK AGGROIA, MD,)	SENIOR JUDGE LEONARD D. WEXLER
)	
Defendant.)	

STATEMENT OF FACTS

Were this matter to go to trial, the United States of America would prove the following facts beyond a reasonable doubt:

1. On or about December 21, 2004, in Woodbridge, Virginia, within the Eastern District of Virginia, the defendant, ABHAY VIVEK AGGROIA, MD, did unlawfully, knowingly, and intentionally dispense through a prescription a mixture and substance containing a detectable amount of oxycodone, also known as “Percocet,” a Schedule II controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

2. This Statement of Facts does not contain each and every fact known to the defendant and to the United States concerning the defendant's and other's involvement in the charges set forth in the plea agreement.

3. Since July 1997, the defendant (age 51) has been licensed to practice medicine in the Commonwealth of Virginia. The defendant specializes in internal medicine.

4. During 2004 to the present, in Woodbridge, Virginia, within the Eastern District of Virginia, the defendant has maintained a medical office (“office”) where he would examine

patients.

5. During in or about June 2004 to January 2005, in his office on at least two to three occasions, the defendant had inappropriate physical contact with Patient A during her medical visits with defendant. They never had sexual intercourse.

6. On or about December 21, 2004, the defendant issued to Patient A a prescription for forty (5mg) Percocet pills, which was outside the bounds of medicine and for no legitimate medical purpose.

7. On or about July 21, 2005, in his office, the defendant and a special agent with the Virginia State Police had a conversation about Patient A's treatment. Although the meeting was noncustodial, the agent read the defendant his Miranda rights, which he voluntarily waived. He later signed a statement: "[Patient A] was my patient for pain treatment. I prescribed her pain medications (Percocet) for some time [and] tried to wean her off. During our relationship[,] there was some inappropriate physical contact."

8. The amount of Percocet attributable to the defendant is 40 (5 mg) pills (USSG level 10).

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____
Gene Rossi
Assistant U.S. Attorney

Marla Tusk
Special Assistant U.S. Attorney

SEEN AND AGREED TO BY:

ABHAY VIVEK AGGROIA, MD
Defendant

Brendan D. Harold, Esq.
Counsel for Defendant

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)	
Defendant.)	

WAIVER OF INDICTMENT

I, ABHAY VIVEK AGGROIA, MD, the above named defendant, who is accused of dispensing through a prescription a mixture and substance containing a detectable amount of oxycodone, in violation of 21 U.S.C. § 841(a)(1), being advised of the nature of the charge, the proposed information, and of my rights, hereby waive in open court prosecution by indictment and consent that the proceeding may be by information rather than by indictment.

ABHAY VIVEK AGGROIA, MD
Defendant

Brendan D. Harold, Esq.
Counsel for Defendant

Before:

UNITED STATES DISTRICT JUDGE

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Defendant.)	

CRIMINAL INFORMATION

THE UNITED STATES ATTORNEY CHARGES THAT:

On or about December 21, 2004, in Woodbridge, Virginia, within the Eastern District of Virginia, the defendant, ABHAY VIVEK AGGROIA, MD, did unlawfully, knowingly, and intentionally dispense through a prescription a mixture and substance containing a detectable amount of oxycodone, also known as "Percocet," a Schedule II controlled substance.

(In violation of Title 21, United States Code, § 841(a)(1))

Paul J. McNulty
United States Attorney

By: _____
Gene Rossi
Assistant U.S. Attorney

Marla Tusk
Special Assistant U.S. Attorney